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To: AF/C - Arlene, Reed, Kevin & co.

From: L/AF - Joan Donoghue

Subject: Rwanda: is it "genocide" within the meaning of the 1948 Genocide Convention?

This morning, Mary Swann asked L to speak with the press spokesperson on the question whether the events in Rwanda are "genocide" within the meaning of the 1948 Genocide Convention. I attach a paper prepared by L/HRR David Stewart) on this issue and call your attention to three points:

(1) There are three elements of "genocide:" (1) certain prohibited acts (including killings of group members); (2) directed at certain kinds of groups (including national/ethnic groups) and (3) with the intent of destroying the group in whole or in part. The first two elements are plainly met in Rwanda. The third element apparently derives from the Holocaust, in which government "plans" made it easy to define an "intent." This element is more elusive in situations like Rwanda, although intent can sometimes be inferred from the other facts. In ratifying the Convention, the United States expressly stated its view that there must be "specific intent" to destroy a covered group.

(2) When acts are labeled "genocide," this can increase the political expectation that the USG will "do something" about them. The L lawyers who handle human rights issues have noted that, for this reason, decisions on whether to use the "genocide" label in the former Yugoslavia have been taken personally by the Secretary.

(3) As the attached paper indicates, the Genocide Convention provides four means of pursuing allegations of genocide: (1) domestic criminal prosecution (difficult in circumstances like Rwanda); (2) an international criminal court (none now exists; conceivably, one could be established, as in Yugoslavia); (3) referral to the UN (presumably, to the UNSC); and (4) proceedings against a government before the International Court of Justice (not useful where perpetrators are not from the government and only relevant here if Rwanda is a party to the Genocide Convention (I can check)).

I assume that this is not the last that we will hear of this issue. Please let me know if L can be of assistance.

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## GENOCIDE

Under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, to which the United States, Rwanda and 100 other countries are Parties, "genocide" is defined to include any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group:

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) imposing measures intended to prevent births within the group;
- (e) forcibly transferring children of the group to another group. (Article II)

Thus, as a matter of international law, the crime of genocide includes three principal elements: (1) one or more of the prohibited acts (2) directed at a particular national, ethnical, racial or religious group (3) with the intent of destroying that group in whole or in part.

Persons charged with genocide may be tried by a competent tribunal of the State in which the acts were committed or by an international penal tribunal having jurisdiction accepted by the relevant States Party (no such international tribunal has been established). The Convention further provides that all persons guilty of the crime shall be punished "whether they are constitutionally responsible rulers, public officials, or private individuals." States Party to the Convention may call upon the competent UN organs to take appropriate action to prevent and suppress acts of genocide.

Forcible repression of an armed rebellion would not, in and of itself, constitute genocide, nor would indiscriminate killing of innocent noncombatants or other brutal military actions. However, acts constituting the crime of genocide would not be rendered legitimate because they were carried out in response to an armed insurrection or rebellion.

In ratifying the Genocide Convention, the United States put on record its view that, in order to meet the Convention's criteria, there must be "specific intent to destroy, in whole or in substantial part, a national, ethnical, racial or religious group as such by the acts specified in Article II."

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